

## COVID-19 Pandemic State Licensing and Certification Waivers

*April 12, 2020*

The need to respond to COVID-19 in California and nationally poses substantial and complex legal questions and concerns. Below are state legal resources compiled by CHA, related to licensing and certification waivers, survey activity, enforcement discretion, and the like. **Hospitals should consult legal counsel with specific questions.**

**Note: State waivers apply only to state law and do not change federal law — even if the state and federal requirements are the same. CHA has also compiled a [list of federal waivers](#).**

### Governor's Executive Orders

Governor Newsom has issued many executive orders related to the pandemic. Those of particular interest to hospitals are noted below. Others can be found at [www.gov.ca.gov/newsroom/](http://www.gov.ca.gov/newsroom/).

#### [Executive Order – April 3, 2020](#)

- Suspends the requirement to obtain oral or written consent from the patient for telehealth services
- Allows health care providers to use video chats and other applications to provide health services consistent with federal HIPAA guidelines and waivers (*See CHA's [list of federal waivers](#).*)
- Suspends penalties for privacy breaches related to telehealth services, as well as penalties for late notifications
- Lengthens the time frame for notifying CDPH and patient of breaches related to telehealth from 15 to 60 days, which may be confusing because CDPH waived the breach notification requirements on March 20 in AFL 20-26 (*See "Hospital Licensing: All Facilities Letter (AFL) 20-26" below.*) Because HIPAA breach notification requirements are not suspended, CHA recommends notifying CDPH at the same time the patient is notified, to the extent staff is available to do so.

#### [Executive Order – March 30, 2020](#)

- Authorizes the California Department of Public Health (CDPH) to waive licensing and staffing requirements for hospitals and other health facilities. Note that the requirements for hospitals had already been waived on March 20 pursuant to All Facilities Letter 20-26; the more recent Executive Order granted CDPH the authority to waive some additional

requirements for skilled nursing and other nonacute facilities. The waiver of requirements in Chapter 2 of Division 2 of the Health and Safety Code is retroactive to March 20, and the waiver of requirements in Chapter 2.4 (which relate to nonacute facilities) took effect March 30. (See *“Hospital Licensing - All Facilities Letter (AFL) 20-26”* below for more information about the waived hospital requirements.)

- Authorizes CDPH to waive licensing and certification requirements and amend scope of practice for certified nursing assistants (CNAs), home health aides, nursing home administrators, and certified hemodialysis technicians. CDPH exercised this authority with respect to CNAs in All Facilities Letter 20-35 (See *“Certified Nursing Assistants (CNAs)”* below for details.)
- Suspends certain certification and permitting requirements of the Radiologic Technology Act – see Executive Order for details. (See also *“Radiologic Health Branch”* below for additional waivers.)
- Authorizes CDPH to waive hospital licensing requirements pertaining to the credentialing and privileging of physicians. These had already been waived pursuant to All Facilities Letter 20-26. (See *“Hospital Licensing - All Facilities Letter (AFL) 20-26”* below for more information.)
- Authorizes the California Department of Consumer Affairs (DCA) to waive professional licensure requirements and amend scope of practice for health care professionals. CHA immediately submitted waiver requests on behalf of all CHA member hospitals to allow registered nurses, temporary licensees, interim permittees, advance practice nurses, physician assistants, and respiratory care practitioners to continue to practice even if their license or permit has expired. In addition, CHA has requested waivers of requirements for standardized procedures, patient-specific protocols, ratio of physicians to other practitioners, written practice agreements, and physician supervision level (general vs. direct). DCA is currently reviewing CHA’s waiver request.
- Authorizes the Emergency Medical Services Authority (EMSA) to suspend licensing, certification, and training requirements for emergency medical technicians and paramedics, including allowing them to practice in any setting – including hospitals. EMSA has provided [details here](#).

#### [Executive Order – March 21, 2020](#)

Gives CDPH the authority to waive licensing and staffing requirements for clinics, adult day health care, hospice, and mobile health care units. (CDPH exercised this authority in All Facilities Letter 20-28 (See *“Primary Care Clinics and Mobile Health Care Units”* below for details.)

#### [Executive Order – March 19, 2020](#)

Stay-at-home order. Also, check your local health department for local orders, which may be stricter.

#### [Executive Order – March 15, 2020](#)

- Directs CDPH and Cal/OSHA staff to focus on providing technical assistance and support

to health care facilities; limits agencies' enforcement activity

- Authorizes asymptomatic health care workers to continue to work, with precautions to prevent transmission

#### Executive Order – March 12, 2020

- Allows the Emergency Medical Services Authority (EMSA) to add to optional scopes of practice for paramedics
- Allows the California Health and Human Services Agency and the Office of Emergency Services to identify and make available (through contracts or power to commandeer) medical and other facilities to respond to the pandemic
- Suspends certain licensing and certification requirements for laboratory personnel performing COVID-10 testing
- Requires all residents to obey orders and guidance of state and local health officials

#### Proclamation of State of Emergency – March 4, 2020

- Gives CDPH the authority to suspend all hospital licensing requirements in Chapter 2 of Division 2 of the Health and Safety Code. CDPH exercised this authority in All Facilities Letter 20-26 (See *"All Facilities Letter 20-26"* below for details.)
- Gives EMSA the ability to quickly authorize out-of-state medical personnel to practice in California. See <https://emsa.ca.gov/covid19/> for details.
- Prohibits price gouging (see *"Price Gouging"* below for information on where to file a complaint)
- Allows EMSA to let paramedics transport patients to facilities other than acute care hospitals
- Gives the Department of Social Services the ability to waive day care licensing requirements (See *"Department of Social Services"* below.)
- Requires all individuals to obey emergency officials

### **California Department of Public Health**

#### Hospital Licensing: All Facilities Letter (AFL) 20-26

- Waives all hospital licensing requirements in Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations (Title 22), with a few exceptions. CHA has posted a copy of this waiver and important details [here](#).

#### Certified Nursing Assistants (CNAs): All Facilities Letter 20-35

- Allows a CNA whose certificate expired within the past two years or whose certificate will expire during the emergency to work without renewing. Facilities must check CDPH's online verification page to verify employment eligibility.

- Allows a CNA certificate to be renewed without continuing education units. The units may be completed at any time during the two-year recertification period and may be completed online or by distance learning.
- Allows a CNA student to provide patient care prior to having a test for tuberculosis infection
- Allows a licensed vocational nurse or registered nurse with a license issued by another state or foreign country, whether active or expired within the last two years, to work as a CNA immediately upon submission of an application to CDPH
- Waives requirement to submit a Live Scan until 30 days after the emergency ends
- Allows a CNA student to continue to work during the emergency for more than three months after starting employment even if training requirements are not completed. The CNA may render services only at the competency level confirmed by the training program on a competency checklist to be issued by CDPH.
- Extends the time frame for a CNA to notify CDPH of a change of address – must notify as soon as practicable, but no later than 30 days after the emergency ends

Laboratories: [Governor’s Executive Order of March 12, 2020](#)

- Suspends certain licensing and certification requirements for laboratory personnel performing COVID-10 testing

Primary Care Clinics and Mobile Health Clinics

- CDPH [has waived](#) certain requirements related to licensure, administration, space conversion and services

Radiologic Health Branch

[Waivers include:](#)

- Continuing Education exemption for renewal of radiologic technology certificates and permits with an expiration date up to and including July 15, 2020. This exemption applies to Certified Radiologic Technologists; Limited Permit X-ray Technicians; Physician Assistants (PA) holding a PA Fluoroscopy Permit; and Certified Supervisors and Operators.
- Annual medical physicist CT, fluoroscopy, and mammography equipment surveys: may be extended to a 16-month window from the date of the last survey. For a longer extension or if you have a new unit, contact Lisa Russell ([Lisa.Russell@cdph.ca.gov](mailto:Lisa.Russell@cdph.ca.gov)).
- Annual medical physicist X-Ray therapy equipment calibration/surveys: contact Lisa Russell ([Lisa.Russell@cdph.ca.gov](mailto:Lisa.Russell@cdph.ca.gov)) if you need an extension.

*(See also third bullet point under “Executive Order – March 30, 2020” above.)*

Skilled-Nursing Facilities (SNFs)

- [Extension to April 15, 2020](#), of the application deadline for requesting a Patient Needs Waiver or Workforce Shortage Waiver

- **Waived certain** SNF licensing, staffing, space, and activities program requirements. The All Facilities Letter also prohibits SNFs from refusing to admit or readmit a resident based on their status as a suspected or confirmed COVID-19 case.
- Provided **guidance and a waiver** related to SNF visitor policies

(See also first and second bullet points under “Executive Order – March 30, 2020” above.)

## **Department of Consumer Affairs**

### **Continuing Education and Examination Requirements**

- Examination and continuing education requirements waived for certain health care professionals whose license expires between March 31 and June 30, 2020
- Applies to physicians, nurses, pharmacists, mental health professionals, physician assistants, respiratory therapists, clinical lab scientists/bioanalysts, optometrists, dietitians, physical therapists, occupational therapists, speech-language pathologists, perfusionists, and other professionals licensed under Division 2 of the Business and Professions Code
- Does not apply to certified nursing assistants, paramedics, or emergency medical technicians — they are licensed/certified by other state agencies.
- Licensees must still submit their required renewal form on time and satisfy waived exam or continuing education requirements by October 1, unless an additional extension is issued.

### **License Reactivation or Restoration**

- Continuing education requirements and all fees are waived, including renewal, delinquency, penalty, late or any other fees for health care professionals licensed in the past five years who want to reactive or restore a retired, inactive, or canceled license (*For a list of covered health professionals, see the second bullet point under “Continuing Education and Examination Requirements” above.*)
- Waiver does not apply to licenses that were surrendered or cancelled for disciplinary reasons
- A reactivated or restored license is valid until October 1 or when the state of emergency ends, whichever is sooner.
- The licensee must still comply with any other reactivation or restoration requirements, including submitting required forms or notices to their licensing agency.

## **Board of Pharmacy**

The Board **has issued waivers** related to:

- Inventory reconciliation reports
- Sterile compounding license renewal
- Receiving drugs/devices from an unlicensed pharmacy, wholesaler, or third-party logistics provider located out-of-state

- Pharmacists supervising an additional pharmacy intern or technician
- Remote processing by pharmacists, interns, technicians
- Signature for receipt of delivery of drugs
- Prescribers dispensing short-acting or long-acting bronchodilator to an emergency room patient
- Consulting pharmacist quarterly visits to clinic
- USP 797 personal protective equipment (PPE) requirements
- Use of alcohol sanitizer before donning sterile gloves
- Pharmacist duty to provide in-person oral consultation
- Use of PPE in certain compounding aseptic isolators or compounding aseptic containment isolators
- Extension of intern pharmacist license with an expiration date on or before July 1, 2020, for an additional six months
- Use of sterile disinfectant agents – this waiver allows the use of a non-sterile alcohol-based disinfectant after cleaning on work table surfaces, carts, and counters if certain requirements are met
- Restoring a pharmacist license that was retired or cancelled within the past 5 years (unless the license was subject to disciplinary conditions or proceedings); the pharmacist must complete the “Application to Restore Your License” form located on the board’s website
- Pharmacists initiating and administering immunizations despite holding a Basic Life Support certificate that expired on or after March 15, 2020

### **Board of Registered Nursing**

- [Announced](#) that during a pandemic, nursing services may be provided by unlicensed persons, including student nurses.
- Developed a [chart showing the types of services](#) a student nurse can provide depending on the coursework completed by the student nurse
- Modified [certain requirements](#) for clinical training sites and for nursing students related to the number of hours needed of direct patient care experience, as opposed to indirect patient care experience (simulation, lab activities)

### **Department of Social Services**

- Allows [temporary employer-sponsored childcare](#) without a license, provided certain conditions are met

### **Emergency Medical Services Authority (EMSA)**

EMSA has [issued information](#) about allowing out-of-state health care practitioners to practice in California; alternate destination (ambulances may take patients to facilities other than hospitals); and paramedic scope of practice.

EMSA [has suspended](#) certain licensing, certification, and training requirements for emergency medical technicians and paramedics, and is also allowing them to practice in any setting, including hospitals.

### **Office of Statewide Health Planning and Development**

- [Temporary suspension of late reporting penalties](#) for multiple reports, including patient data and financial and utilization information
- 2020 seismic safety milestone deadline extensions: OSHPD will grant extensions, upon request, to the construction milestones individual hospitals established as part of their 2020 seismic safety extensions. This is not automatic – the hospitals must request a delay and work with OSHPD to develop new milestones.

### **Other**

#### **Statistics:**

- **U.S. count:** The current count of COVID-19 cases in the United States is available on the [CDC's website](#).
- **California count:** The current count of COVID-19 cases in California is available on [CDPH's website](#).
- **Local count:** Check with your local public health department. A list of public health departments is available [here](#).

#### **Centers for Medicare & Medicaid Services (CMS) Survey Activity**

- CMS [announced general enforcement discretion](#) until at least April 13. This applies to hospitals, long-term care facilities, home health agencies, hospices, and laboratories.
- No surveys will be conducted except: (1) In response to complaints and facility-reported incidents that CMS believes may constitute an immediate jeopardy; a streamlined infection control review tool will be used during these surveys, regardless of the allegation; (2) Targeted infection control surveys of providers identified through collaboration with CDC and the HHS Assistant Secretary for Preparedness and Response (ASPR) – the streamlined infection control review tool will be used; and (3) Initial certification surveys.
- The infection control tool is included with the CMS announcement and may be used for self-assessment.
- The CMS announcement also includes voluntary guidance on visitor restrictions for hospitals.
- CMS has issued many waivers, available at [www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers](http://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers). (See also [CHA's list of federal waivers](#).)

### The Joint Commission

- All regular, on-site surveys of hospitals and other health care organizations are suspended, effective March 16 until the end of May.
- If an organization goes beyond its accreditation due date, accreditation status is extended, and Medicare payment status is not affected.
- See [The Joint Commission's customer letter](#) from April 1.

### Hotel Rooms for Exposed/Positive Health Care Workers

[See more information here.](#)

### Price Gouging/Hoarding

Price gouging is illegal, and the California Attorney General is conducting surveillance on potential price gouging in the health care marketplace. If you have information or leads to share, use the Attorney General's complaint intake portal at <https://oag.ca.gov/contact/consumer-complaint-against-business-or-company>.

In addition, the U.S. Department of Justice and the U.S. Department of Health and Human Services are aggressively pursuing cases to prevent the hoarding or price gouging of medical supplies and drugs essential to combat COVID-19, as well as other fraud related to the pandemic. If you have been the target or victim of price gouging, or are aware of the hoarding of essential medical supplies or drugs necessary to fight the virus, please report it to the National Center for Disaster Fraud Hotline at (866) 720-5721 or via email at [disaster@leo.gov](mailto:disaster@leo.gov). For more information, visit [www.justice.gov/coronavirus](http://www.justice.gov/coronavirus).

### **Additional CHA Resources**

CHA maintains a coronavirus resource web page featuring content and FAQs specific to human resources, wage and hour laws, employee health and safety, clinical concerns, Medi-Cal waivers, and more – go to [www.calhospital.org/coronavirus](http://www.calhospital.org/coronavirus). CHA has also created a daily newsletter for hospitals, called Coronavirus Response, that notifies hospitals of important developments, including newly issued waivers, flexes, enforcement discretion, and a wide range of other topics. To be added to the distribution list, contact Christina Devi at [cdevi@calhospital.org](mailto:cdevi@calhospital.org).

Questions about waivers? Email Lois Richardson at [lrichardson@calhospital.org](mailto:lrichardson@calhospital.org).